

## **Overview and Accomplishments of the Joint Legislative Sunset Review Committee Process**

### **BACKGROUND: WHY THE SUNSET REVIEW LAW WAS PASSED IN 1994?**

The concept of sunset review law first began over twenty years ago. There are now about 35 states which have some sort of sunset review law on the books. Basically, the genesis behind all sunset laws is to place a termination date on a particular program or agency, and in the meantime, review it to determine if it is still operating in an effective and efficient manner, and whether it should continue.

When one talks about sunset or sunrise laws, they are usually referring to a review of regulatory licensing agencies. There are certainly other specific programs which may be subject to sunset, but the idea of subjecting an agency to a more formalized review process, before allowing it to continue, or be established in the first place, is unique to this type of law.

California was sort of a “Johnny-come-lately” to this process. There have been prior attempts to pass a sunset law, but in those instances the legislation would have sunset both the board and the licensing of the particular profession. The law which was passed in 1994, only sunsets the boards -- not the licensing of the occupation.

There are basically two reasons for this, the first is obvious – in most instances there is a continued need to license those professions currently regulated by boards under the Department of Consumer Affairs (DCA). To automatically terminate the licensing requirements would have provided no benefit to the review of these boards under the sunset law. The second reason, however, is more important. Throughout 1993 and 1994, both the Senate Business and Professions Committee and the Assembly Consumer Protection Committee began a review of some of the 32 regulatory boards under the Department. There was more concern with the board’s operation and activities (or lack thereof) than whether there was a need to continue the licensing of a particular profession. A number of problems with these boards were identified:

1. There were licensing laws and regulations which clearly benefited the profession but not the consumer, nor the professional candidate who wanted to enter into the profession. In effect, the licensed group, through the board and its licensing program, had set up artificial barriers of entry into the profession that enabled it to control the availability and cost of services and restrict competition. (Artificial barriers included: extensive education and experience requirements, providing examinations that only a few could pass, no reciprocity or comity agreements for those licensed in other states.)
2. Little or no disciplinary actions were being taken against licensees (license revocations or suspensions). Boards would argue, “that they were doing such a good job of weeding out the incompetent, that there was little need for enforcement.” But when the number of licensees and complaints were reviewed – there was a question as to why so few were actually disciplined.
3. Committees of the boards, made up of volunteer professionals, would make decisions usually accorded to staff or the executive officers concerning investigations or disciplinary actions to be taken against licensees.
4. Boards were not carrying out their statutory responsibility for particular programs, or taking an extremely long time to implement. (Example: Boards were not making use of authority to cite and fine licensees for violations of the law, which was granted to them in 1992, or even earlier for some boards.)
5. Boards were not operating their licensing, examination and enforcement programs in an effective and efficient manner. Were not responding to consumer complaints, or resolving complaints in a timely fashion. Program spending was not prioritized and some programs were too costly or completely unnecessary.
6. Boards lacked definitions of professional standards, or what amounted to incompetent, negligent or unprofessional conduct.

For all these reasons and more, both the Legislature and the Administration believed the more immediate task at hand was to review these consumer boards. If it was determined the board should sunset, then there would be adequate time to determine if the entire licensing program should be eliminated as well. (It should be noted that the Hoover Commission and the Legislative Analyst’s Office (LAO) both recommended establishing a sunset review process for all regulatory consumer boards.)

## **BRIEF DESCRIPTION OF THE CURRENT SUNSET REVIEW PROCESS**

The law, which went into effect on January 1, 1995, set in place a schedule for review of all of the 32 independent boards and programs under the Department of Consumer Affairs. It allowed for an initial review of all boards beginning in 1995 and ending in 1998.

A re-review of these boards is required after four or more years from the initial review, and is now scheduled beginning in 1999 and ending in 2004.

The sunset date for each board allows enough time for the board to be reviewed by the Joint Committee, and for legislation to be passed to extend the sunset date of the board and make appropriate changes.

The actual review process for the Joint Committee begins with sending boards a questionnaire and a request for information which covers every aspect of the board's operation for the past four years.

During this time, staff of the Joint Committee prepare an analysis and report on each board. (Staff also meets with boards to review documents and information provided, and seeks input from various consumer groups, and the Health and Budget committees of the Legislature.) The report provides a brief overview of the board's functions and programs, identifies issues or problem areas concerning each board, and includes preliminary recommendations for members of the Joint Committee to consider. This includes whether each board scheduled for review shall be terminated, continued, or reestablished, and whether its programs or functions should be restructured or revised.

The Joint Committee then meets in November to review the issues and preliminary recommendations. The boards are provided an opportunity to respond, along with the regulated industry, consumer groups and the public. The Department participates in these hearings as well.

If the board falls under the aegis of the Department, after the hearings, the Joint Committee provides the Department with copies of all testimony and analyses prepared by staff. The Department then has 60 days to provide its own recommendations to the Joint Committee. Once received, the Joint Committee then meets to review the recommendations of the Department and make final recommendations to the Legislature.

## **CONSIDERATIONS MADE DURING THE REVIEW AND EVALUATION OF BOARDS AND REGULATORY PROGRAMS**

The primary focus of the review is laid out in detail under the sunset law. Generally, the Joint Committee and its staff will evaluate the following:

1. Whether the board operates and enforces its regulatory responsibilities in the public interest and is carrying out its statutory duties mandated by the Legislature.

2. Whether regulation by the board of the particular occupation is necessary or whether conditions have arisen that would warrant deregulation of this licensing program.
3. Whether the membership of the board reflects both consumer interests and the licensing population, and whether the board encourages public participation in its decision making.
4. Whether the board's licensing, examination and enforcement programs are administered so as to protect the public, or are they, instead, self-serving to the profession, industry or individuals being regulated by the board.
5. Whether the board and its laws or regulations stimulate or restrict competition, and the extent of the economic impact the board's regulatory practices have on the state's business and the growth of this industry and profession in California.
6. Whether consumers are satisfied with the board's treatment and response to their individual complaints.
7. Whether the board's regulatory mission is impeded or enhanced by existing statutes, regulations, policies, practices, or any other circumstances, including budgetary, resource and personnel matters.

## **RESULTS/ACCOMPLISHMENTS OF THE SUNSET REVIEW PROCESS**

The overall goal of the Joint Committee is to provide for improved and effective service to California consumers, and to the board's current and potential licensees. The process of sunset review has provided an opportunity for legislative staff and members to focus on the operations of these state regulatory programs and to consider changes which could improve their overall performance in protecting the consumer.

The specter of termination has served to galvanize most of these agencies and the professions they regulate, so as to make necessary statutory and administrative changes to increase the efficiency and effectiveness of these programs under review. If a regulatory program is considered as unnecessary, or performance of the board is exceptionally poor, a recommendation is made to either sunset the agency, or shorten its time frame for another review by the Joint Committee.

While numerous reforms have been enacted through the "Sunset" process, few boards have actually "Sunset". The only regulatory agencies eliminated over the past 20 years are the Board

of Fabric Care (licensing dry cleaners), the Auctioneer Commission, and the Board of Polygraph Examiners. In the meantime, the Legislature has continued to create new licensure categories or programs with little, if any, assessment of current programs.

During 1995/96, the first sunset review period, 11 boards and programs were scheduled for review, 7 were recommended to sunset on July 1, 1997. Four were recommended to continue, but with some major changes to their programs.

In 1996/97, an additional 12 boards were reviewed, 2 were recommended to sunset on July 1, 1998, 3 were recommended to receive a shorter period for their next sunset review until major licensing issues were resolved. For the 10 boards continued, the Joint Committee requested specific changes to improve their programs and make statutory changes where necessary.

In 1997/98, another 12 boards were reviewed. The Joint Committee supported the retention of all the regulatory programs, but also considered the merger of at least two boards: Hearing Aid Dispenser Examining Committee and the Speech-Language Pathology & Audiology Board. The Joint Committee also recommended elimination of several sub-licensing categories which were identified as unnecessary or outdated, and elimination or changes in licensing requirements for particular boards. There were also several recommended changes in board composition to increase overall public representation on several boards, and a close examination of budgetary concerns for at least two boards.